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No. 97/32

June 5, 1997

TO COUNTY ASSESSORS:

REVENUE AND TAXATION CODE SECTION 63.1:  
GRANDPARENT/GRANDCHILD EXCLUSION

On March 26, 1996, the voters of California passed Proposition 193, which amended section 2(h) of article XIII A of the California Constitution to exclude from the definition of "change in ownership" certain transfers between grandparents and their grandchildren (see Letter to Assessors No. 96/40, dated July 3, 1996). Subsequently, the Governor signed SB 1827 (Chapter 1087, Statutes of 1996), which took effect on January 1, 1997. A portion of this bill amends Revenue and Taxation Code section 63.1 (copy enclosed), which implements the parent/child exclusion (Proposition 58), to reflect the grandparent/grandchild provisions of Proposition 193.<sup>1</sup>

As amended, section 63.1 applies to the purchase or transfer of real property from grandparents to their grandchild, provided that all of the parents of that grandchild who qualify as the children of the grandparents are deceased as of the date of purchase or transfer. The grandparent/grandchild exclusion applies to transfers, including a change in ownership arising on the date of a decedent's death, occurring on or after March 27, 1996.

As explained below, there are several important differences between the parent/child exclusion and the grandparent/grandchild exclusion. The major differences are the definition of "parent" (see "Middle Generation Limitation" below), a one-way transfer limitation, a principal residence limitation, and application of the \$1 million limitation.

**MIDDLE GENERATION LIMITATION.** A limiting condition of Proposition 193 is that it applies only if all of the parents of the grandchild or grandchildren who qualify as the children of the grandparents, as defined in section 63.1(c)(3), are deceased as of the date of the transfer.<sup>2</sup> Whether a claim will meet this criterion will depend on the status of the relationship between the grandparent(s) and the grandchild's surviving parents, if any, as of the date of the transfer.

<sup>1</sup> All statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

<sup>2</sup> In general terms, "parent" means a grandchild's parent who is a natural or legally adopted child of the grandparent(s). "Parent" also includes a stepchild or in-law child of the grandparent(s), unless the marriage on which the relationship was based was terminated by divorce. However, where the marriage on which the relationship was based was terminated not by divorce, but instead by the death of the grandparent's natural or legally adopted child, the surviving spouse (i.e., the stepchild or in-law child of the grandparent(s)) is considered a "child" of the grandparent(s) until he/she remarries.

Obviously, if the grandchild has no surviving parents on the date of a transfer, then the criterion is met. On the other hand, if the grandchild's surviving parent is a natural or legally adopted child of the grandparent, then the criterion is *not* met, and the exclusion would not apply. Aside from these two obvious situations, it is necessary to test the relationship between the surviving parent of the grandchild and the transferor grandparent(s) as of the date of the transfer.

Specifically, if the marriage on which that relationship was based (i.e., the marriage of the grandparent's deceased natural or legally adopted child and the grandchild's surviving parent) had been terminated by divorce, the grandchild's surviving parent would no longer be considered a "child" of the grandparent(s), and so the criterion *would* be met. If, on the other hand, that marriage had been terminated by the death of the grandparent's natural or legally adopted child—and the grandchild's surviving parent had not remarried—then the surviving parent would be considered a child of the grandparent, and the exclusion would *not* apply.

Note that it makes no difference whether the grandchild's surviving parent is a stepparent, a natural parent, or an adoptive parent; in either case, the only issues are (1) whether the marriage between the grandparent's natural or legally adopted child and the surviving parent was terminated by death or divorce, and (2) if that marriage was terminated by death, whether the surviving parent had remarried as of the date of the transfer.

#### *Example 1*

Assume that as of March 14, 1996, Sally and George are married and are the parents of Chris. On March 21, George dies, leaving Sally a widow. On March 28, George's father, Irving, transfers real property to Chris. As of March 28, Sally has not remarried. Under these facts, the exclusion would *not* apply since, as of the date of the transfer, Sally qualified as a child of Irving for purposes of section 63.1(c)(2).

#### *Example 2*

Assume the same facts as in Example 1, with the additional fact that Sally remarried on March 24. Under these facts, the exclusion *would* apply, since Sally's remarriage as of the date of the transfer meant that she no longer qualified as Irving's child for purposes of section 63.1(c)(2).

#### *Example 3*

Assume the same facts as in Example 2, with the additional fact that, on March 15, Sally and George divorce. (Thus, George's death on March 21 does not leave Sally a widow.) Under these facts, the exclusion *would* apply. This is so because as of the date of the transfer, Sally, Chris's surviving parent, did not qualify as Irving's child for purposes of section 63.1(c)(2).

#### *Example 4*

Assume the same facts as in Example 3, with the additional fact that, on March 19 after the divorce, George married Lisa. On March 21, George dies, leaving Lisa a widow. As of March 28 (the day Irving transfers property to his grandson Chris), Lisa has not remarried. Under these facts, the exclusion would *not* apply since, as of the date of the transfer, Lisa (Chris's stepmother) qualified as a child of Irving for purposes of section 63.1(c)(2).

**ONE-WAY TRANSFER LIMITATION.** An additional limitation is that this exclusion applies only to transfers from grandparents to grandchildren. In section 63.1(c)(2), the Legislature defined "[p]urchase or transfer of real property between grandparents and their grandchild or grandchildren" to mean "a purchase or transfer from a grandparent(s) to a grandchild or grandchildren." Thus, transfers from grandchildren to grandparents do not qualify for the exclusion from change in ownership.

**PRINCIPAL RESIDENCE LIMITATION.** In the case of a transfer between parents and their children, real property which can be excluded from change in ownership under section 63.1 includes a transferor's principal residence and the first \$1 million of full cash value of all other real property. However, Proposition 193 places a limit on the exclusion of principal residences transferred from grandparents to grandchildren. Specifically, under section 63.1(a)(3)(B), if the grandchild previously received property that was *excludable* under section 63.1 as a principal residence, any principal residence that the grandchild receives from the grandparent is considered "other real property" that is subject to the \$1 million limitation.

To be *excludable* under section 63.1(a)(1) as a principal residence, a property must have transferred between a parent and a child, as defined, and a homeowners' exemption or a disabled veterans' exemption must have been granted in the name of the parent. Claiming and granting the parent/child exclusion is not necessary—the principal residence simply must be excludable, not excluded, pursuant to section 63.1(a)(1). Thus, a check of old assessment rolls for the homeowners' or disabled veterans' exemptions may be necessary to confirm whether or not the grandchild previously received a principal residence.

**\$1 MILLION LIMITATION.** It was the intent of the author of Proposition 193 to deny taxpayers the grandparent/grandchild exclusion if the grandchild has already received the maximum property tax benefit of Proposition 58 from their parent. Thus, Proposition 193 limits the amount of "other real property" that a grandchild can have excluded.

Based on the legislative history and the express wording in section 63.1(a)(3), the \$1 million exclusion available to grandchildren for property other than a principal residence received from their grandparents is the **same** \$1 million full cash value exclusion which they have remaining available from their parents pursuant to section 63.1(a)(2). There is no authorization for a "separate" \$1 million exclusion from grandparents to grandchildren. Thus, a grandchild can have excluded only \$1 million of property transferred from his/her father and his parents (paternal grandparents) and \$1 million of property transferred from his/her mother and her parents (maternal grandparents).

As a result, if the grandchildren have either not received other real property from their parents or not received other real property equal to the amount of the \$1 million exclusion from the parents, then the \$1 million exclusion from the parents may be applied, to the extent of the remaining amount available, for "other real property" from their grandparents. Note that this limitation does not affect the \$1 million exclusion that is otherwise available for transfers from the grandparents to their own children. In other words, while the value of "other real property" that grandparents transfer to their grandchildren is applied to the *parent's* \$1 million exclusion, each grandparent nevertheless has available the usual limit of \$1 million of "other real property" that may be excluded from change in ownership upon transfer to their own children.

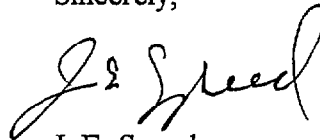
**CLAIM FORMS AND DOCUMENT SUBSTANTIATION.** New claim forms are being developed for this exclusion. Copies will be forwarded as soon as possible. The claim form will require a certification by a transferee grandchild that all the parents who qualify as children of the grandparents were deceased as of the date of the transfer. The certification will also require a statement that the grandchild or grandchildren either did or did not receive a principal residence or other real property from the deceased parents.

Section 63.1(d)(1)(A) provides in the last sentence that the claimant "shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor." This gives county assessors authorization to request that claimants provide legal documents that validate the information provided on the claim (i.e., grant deeds, death notices, marriage certificates, final decrees of distribution, trust documents, etc.).

**CLAIM REPORTING PROCESS.** We will not, at this time, modify the Proposition 58 data base program; please process and report claims for this exclusion as you would the parent/child claim. Note that any properties transferred under the grandparent/grandchild exclusion are to be reported against the deceased parent's social security number (i.e., the direct descendent of the grandparents). When the \$1 million limit is exceeded, we will mail a report to all counties involved as we presently do. The procedures will remain the same for reconciling these reports.

If you have any questions pertaining to the forms, please contact Bill Minor at (916) 445-4982. If you have questions regarding the content of this letter, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,



J. E. Speed  
Deputy Director  
Property Taxes Department

JES/grs  
Enclosure

63.1. Transfers between parents and their children. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(3) (A) Subject to subparagraph (B), the purchase or transfer of real property described in paragraphs (1) and (2) of subdivision (a) occurring on or after March 27, 1996, between grandparents and their grandchild or grandchildren, if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1) of subdivision (a). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (2) of subdivision (a) and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence shall be included in applying, for purposes of paragraph (2) of subdivision (a), the one million dollar (\$1,000,000) full cash value limit specified in paragraph (2) of subdivision (a).

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar (\$1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar (\$1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) "Purchase or transfer of real property between grandparents and their grandchild or grandchildren" means a purchase or transfer on or after March 27, 1996, from a grandparent or grandparents to a grandchild or grandchildren if all the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer. For purposes of this section, the date of any transfer between grandparents and their grandchildren under a will or by intestate succession shall be the date of the decedent's death.

(3) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For

purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(4) "Grandchild" or "grandchildren" means any child or children of the child or children of the grandparent or grandparents.

(5) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) "Eligible transferor" means a grandparent, parent or child of an eligible transferee.

(7) "Eligible transferee" means a parent, child, or grandchild of an eligible transferor.

(8) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(9) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) "Social security number" also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal place of residence excludable under paragraph (1)

of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is grandparent, a parent or child of the transferee. The written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed:

(1) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(3) Notwithstanding paragraphs (1) and (2), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

(4) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar (\$1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) (1) Except as provided by paragraph (2), this section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

(2) This section shall apply to purchases or transfers of real property between grandparents and their grandchildren occurring on or after March 27, 1996, and, with respect to purchases or transfers of real property between grandparents and their grandchildren, shall not be effective for any change in ownership, including a change in ownership arising on the date of the decedent's death, that occurred prior to that date.